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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. –, Original

STATE OF ARKANSAS,

Complainant

vs.

STATE OF TEXAS, AND JOHN BEN SHEPPERD,
ATTORNEY GENERAL OF TEXAS,

Defendants

BRIEF ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT FOR COMPLAINANT

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Statement of the Case

A controversy exists between the complainant, the State of Arkansas, and the defendants, the State of Texas and John Ben Shepperd, the duly elected, qualified and acting Attorney General for the State of Texas. This controversy grows out of a contract entered into between the State of Arkansas through her official agent and instrumentality, the University of Arkansas, and the William Buchanan Foundation, a private corporation existing under and by virtue of the laws of the State of Texas.

The William Buchanan Foundation administers a charity created by William Buchanan by a declaration of trust executed in Bowie County, Texas in 1923.

Pursuant to the provisions of the 1923 declaration of trust, the Foundation entered into a contract with the University of Arkansas, the complainant's official agent and instrumentality, under the terms of which the Foundation promised to pay the sum of five hundred thousand dollars ($500,000.00) to the University in exchange for its promise to construct and maintain for a period of twenty (20) years a pediatric ward which is to be the sixth floor of the new charitable hospital of the medical center of the University of Arkansas School of Medicine.

Complainant, by her authorized agent, has fully performed her part of the said contract to date, and the five hundred thousand dollars ($500,000.00) is now due and payable by the Foundation. The Foundation is ready, willing, and able to pay over to complainant the five hundred thousand dollars ($500,000.00) but is prevented from so doing by a pending action for an injunction in the 102nd District Court of Bowie County, Texas. That action was filed by the State of Texas against the Foundation and its Board of Directors, and the University of Arkansas in November of 1952, and seeks to enjoin the performance of the contract hereinabove set out on the ground that the entire funds of the Foundation are to be expended for the residents and citizens of Bowie County, Texas, and for the benefit of such residents and citizens only, by reason of the following provisions of the 1923 declaration of trust:

> **The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said County, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.**

Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in

the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust fund for the purposes mentioned in this paragraph.

The Foundation believes and the complainant contends that the above provisions of the 1923 declaration of trust authorizes expenditures of the fund in any geographical area whatever, and the benefits of the Foundation may be world wide.

Accordingly, it is believed that the rights of the State of Arkansas and her citizens can be protected only by a decree from this Court granting relief prayed for in the complaint.

BRIEF

The jurisdiction of the Supreme Court is set forth in the first two clauses of Section 2, Article III of the Constitution, which are as follows:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;; . . . to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State; . . .
>
> "In all Cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate jurisdiction, both

as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

These Constitutional provisions have been supplemented by the following legislative enactments (28 U.S.C.A.):

"Section 1251. *Original Jurisdiction*

(a) The Supreme Court shall have original and exclusive jurisdiction of:

(1) All controversies between two or more States;

* * * * * * *

It should be noted at the outset that only Clause 1 of Section 2 of Article III of the Constitution confers jurisdiction: Clause 2 merely divides that jurisdiction into original and appellate. "This paragraph (Clause 2) distributing the original and appellate jurisdiction of this Court is not to be taken as enlarging the judicial power of the United States or adding to the cases or matters to which by the first paragraph (Clause 1) the judicial power is declared to extend." Mr. Justice Brewer in *Minnesota* v. *Hitchcock et al.*, 185 U. S. 373 (1902).

Accord: *Louisiana* v. *Texas et al.*, 176 U. S. 1 (1900); *California* v. *Southern Pacific Railway*, 157 U. S. 229 (1895).

Consequently, if the requirements of Clause 1 that "the judicial Power shall extend . . . *to controversies between two or more States*" can be satisfied in the instant case, the Court has jurisdiction of this cause.

It would seem that any *controversy* between two states would satisfy the foregoing requirement and the language of many of the cases appears to support this conclusion. The Court has, for example, repeatedly made the following, or similar, statement:

"It is apparent on the face of these clauses (clauses 1 and 2 of Section 2 of Article III) that in one class of

cases the jurisdiction of the courts of the Union depends 'on the character of the cause, whoever may be the parties,' and in the other, on the character of the parties, whatever may be the subject of the controversy. *Cohens v. Virginia*, 19 U. S. 6." Harlan J. in *United States v. Texas*, 143 U. S. 621 (1892)

"If two states are parties, it is entirely unimportant what may be the subject matter of the controversy." Brewer, J. in *South Dakota* v. *North Carolina*, 192 U. S. 286 (1904).

"The original jurisdiction depends solely on the character of the parties, and is confined to the cases in which are those enumerated parties, and those only." Fuller, C.J. in *Louisiana* v. *Texas et al.*, 176 U. S. 1 (1900).

See, also, *Missouri v. Illinois et al.*, 180 U. S. 208, 219 (1901).

There are, however, numerous limitations on this broad view of the jurisdiction of the Court under Article III. Thus, the Court has no jurisdiction over purely political questions: *Massachusetts* v. *Mellon*, 262 U. S. 447 (1923); *Louisiana* v. *Texas et al.*, 176 U. S. 1 (1900). Neither does it have jurisdiction where there is no actual controversy between states or where the state has suffered no injury.

Massachusetts v. *Missouri et al.*, 308 U. S. 1 (1939);
United States v. *West Virginia et al.*, 295 U. S. 463 (1935).

Nor has it jurisdiction where the suit has been instituted for the benefit of individual citizens and the state is only a nominal party plaintiff. *New Hampshire* v. *Louisiana et al.*, 108 U. S. 76 (1883); *Louisiana* v. *Texas et al.*, 176 U. S. 1 (1900); See, *Oklahoma* v. *Gulf, Colo. & Santa Fe Ry., et al.*, 220 U. S. 290 (1911).

The only limitation on the Court's jurisdiction which is here applicable, however, is the requirement that the plead-

ings must present a "justiciable" issue, or, as it is sometimes phrased, that the subject matter be one of "judicial cognizance", before it is a "case" or "controversy" within the meaning of the Constitutional provisions. *Texas* v. *Florida et al.*, 306 U. S. 398 (1939); *South Dakota* v. *North Carolina*, 192 U. S. 286 (1904); *United States* v. *West Virginia et al.*, 295 U. S. 463 (1935); *Kansas* v. *Colorado*, 185 U. S. 125 (1902).

The Supreme Court has always recognized, however, that the violation of the contractual rights of a state, or the invasion of its proprietary interests or property rights, by a sister state presents a justiciable case or controversy within the Court's original jurisdiction.

Kentucky v. *Indiana, et al.*, 281 U. S. 163 (1930);
Pennsylvania v. *West Virginia*, 262 U. S. 553 (1923);
South Dakota v. *North Carolina*, 192 U. S. 286 (1904);
Texas v. *Florida et al.*, 306 U. S. 398 (1939);
Pennsylvania v. *The Wheeling and Belmont Bridge Company, et al.*, 13 How. 518, 14 L. ed. 249 (1852);
Georgia v. *Pennsylvania Rr. et al.*, 324 U. S. 439 (1945).

Thus, in *Kentucky* v. *Indiana et al.*, 281 U. S. 163 (1930), Kentucky and Indiana, through their respective highway commissions, had entered into an agreement to construct a bridge across the Ohio river. Indiana began to perform, whereupon nine of its citizens and taxpayers brought an action in the Indiana courts to enjoin the members of the highway commission and other officers of Indiana from carrying out the contract on the ground that it was unauthorized and void. Thereupon Indiana ceased performance. Kentucky then instituted this suit seeking specific performance and seeking to enjoin the individual defendants (the nine plaintiffs in the state court action) from prosecuting the state court action. Indiana in its pleadings declared that it thought that the contract was valid but

asserted that it was unwilling to proceed until the state court had acted on the question. The individual defendants attacked the Court's jurisdiction, and argued that under 28 U.S.C.A. Section 371, no injunction should be granted staying proceedings in the suit in the state court, that the proceedings involved the interpretation of statutes and laws of Indiana, and that the contract was not binding on the state of Indiana, being made without authority of law. (All of these questions are involved in the instant case.) The unanimous Court held: (1) the breach of the contract presented a controversy between the states within the exclusive and original jurisdiction of the Supreme Court (p. 173); (2) the individual defendants were not proper parties since their interest was represented by the state and an injunction restraining the suit was not necessary "as a decree in this suit would bind the State of Indiana and on being shown would bar any inconsistent proceedings in the courts of that state"; (3) the fact that the Court would be compelled to pass on questions of state law was immaterial. On the last point the court said (p. 176):

> "It cannot be gainsaid that in a controversy with respect to a contract between states, as to which the original jurisdiction of this court is invoked, this court has the authority and duty to determine for itself all questions that pertain to the obligations of the contract alleged. The fact that the solution of these questions may involve the determination of the effect of the local legislation of either state, as well as of acts of Congress, which are said to authorize the contract, in no way affects the duty of this court to act as the final, constitutional arbiter in deciding the questions properly presented. It has frequently been held that when a question is suitably raised whether the law of a state has impaired the obligation of a contract, in violation of the constitutional provision, this court must determine for itself whether a contract exists, what are its obligations,

and whether they have been impaired by the legislation of the state. While this court always examines with appropriate respect the decisions of state courts bearing upon such questions, such decisions do not detract from the responsibility of this court in reaching its own conclusions as to the contracts, its obligations and impairment, for otherwise the constitutional guaranty could not properly be enforced. . . . Where the states themselves are before this court for the determination of a controversy between them, neither can determine their rights inter sese, and this court must pass upon every question essential to such a determination, although local legislation and questions of state authorization may be involved."

It would appear that the only material difference between the instant case and *Kentucky* v. *Indiana et al., supra* is that in the latter both states were parties to the contract.

In *Pennsylvania* v. *West Virginia*, 262 U. S. 553 (1923), Pennsylvania brought a suit against West Virginia seeking to restrain the latter from enforcing one of its statutes which prohibited the exportation of gas until certain local requirements had been satisfied. The plaintiff contended that the enforcement of the statute would largely curtail and cut off its supply of natural gas and based its prayer for relief on the ground that the statute violated the commerce clause and "on the ground that to enforce the act will subject them to irreparable injury in respect of many of their public institutions and governmental agencies", would jeopardize the health of their citizens and would close many industries. The Court held that the case involved "a justiciable controversy between the states in the sense of the Judiciary Article of the Constitution." Van Devanter, J., writing for the majority said (p. 591):

"Each suit presents a direct issue between two states as to whether one may withdraw a natural product, a common subject of commercial dealings, from an estab-

lished current of commerce moving into the territory of the other. The complainant state asserts that the defendant state denies that such a withdrawal is an interference with interstate commerce forbidden by the Constitution. This is essentially a judicial question."

* * * * * * *

"The attitude of the complainant states is not that of mere volunteers attempting to vindicate the freedom of interstate commerce or to redress purely private grievances. Each sues to protect a twofold interest,—one as the proprietor of various public institutions and schools whose supply of gas will be largely curtailed or cut off by the threatened interference with the interstate current, and the other as the representative of the consuming public whose supply will be similarly affected both interests are substantial and both are threatened with serious injury."

In *South Dakota* v. *North Carolina*, 192 U. S. 286 (1904) suit was brought by South Dakota against North Carolina on bonds issued by the latter which were in default. The plaintiff sought to compel payment of the debt and, in default, the sale at public auction of North Carolina's interest in certain railroad stock mortgaged by it as security for the payment of the bonds. In upholding the court's jurisdiction, Brewer, J., declared that the case directly affected the property rights and interests of the state and added (p. 314):

"A claim for money due being a controversy of a justiciable nature, and one of the most common of controversies, would seem to naturally fall within the scope of the jurisdiction thus intended to be conferred upon the Supreme Court."

And later he said (p. 318):

"Without noticing in detail the other cases referred to by Mr. Justice Shiras in *Missouri* v. *Illinois*, 180

U.S. 208, 45 L. ed. 497, 21 Sup. Ct. Rep. 331, it is enough to say that the clear import of the decisions of this court from the beginning to the present time is in favor of its jurisdiction over an action brought by one state against another, to enforce its property right."

Texas v. *Florida et al.*, 306 U. S. 398 (1939) was an action in the nature of a bill of interpleader brought against four states and the wife and sister of E. H. R. Green, to determine the true domicile of Mr. Green. The bill alleged that each was seeking to impose death duties and that, if they were successful, his estate would be exhausted and Texas, his true domicile, would be deprived of death duties legally due it. The Supreme Court held that it had jurisdiction, saying (pp. 407-408):

"When, by appropriate procedure, a court possessing equity powers is in such circumstances asked to prevent the loss which might otherwise result from the independent prosecution of rival but mutually exclusive claims, a justiciable issue is presented for adjudication which, because it is a recognized subject of the equity procedure which we have inherited from England, is a 'case' or 'controversy' within the meaning of the Constitutional provision; and when the case is one prosecuted between states, which are the rival claimants, and the risk of loss is shown to be real and substantial, the case is within the original jurisdiction of this Court conferred by the Judiciary Article."

* * * * * * *

"We think that the Special Master's finding of jeopardy is sustained; that a justiciable 'case' between the states is presented; and that a cause of action cognizable in equity is alleged and proved. The fact that no relief by way of injunction is sought or is recommended by the Special Master does not militate against this conclusion. While in most causes in equity the principal relief sought is that afforded by injunction, there are others in which the irreparable injury which is the indispensable basis for the exercise of equity

powers is prevented by a mere adjudication of rights which is binding on the parties. This has long been the settled practice of this Court in cases of boundary disputes between states.

* * * * * * *

"While courts of equity in such suits may and frequently do give incidental relief by injunction to secure the full benefits of the adjudication and to terminate the litigation in a single suit, they are not bound to do so and their adjudication of the conflicting claims is not any the less effective as res judicata because not supplemented by injunction. We do not doubt that when the equity powers of the Court have been invoked it has power in its discretion to give such incidental relief by way of injunction as will make its determination the effective means of avoiding risk of loss to any of the parties by reason of the asserted multiple tax liability. But the plenary effect of its decision as res judicata, and considerations of convenience in the levying of the tax by the usual state procedure, make it unnecessary and undesirable that the Court should proceed beyond adjudication. The fact that the Court, for reasons of policy or convenience, does not exercise the power which it possesses and which has been traditionally exercised in like cases between private suitors does not deprive the suit of its character as a case or controversy cognizable by the Court in an original suit." (pp. 411-412)

The Court also held that, if the court had jurisdiction, the joinder of individuals as necessary parties was immaterial, saying (p. 405):

"The present suit is between states, and the other jurisdictional requirements being satisfied, the individual parties whose presence is necessary or proper for the determination of the case or controversy between the states are properly made parties defendant. Cf. *United States* v. *West Virginia*, 295 U.S. 463."

In *Pennsylvania* v. *The Wheeling and Belmont Bridge Company*, 13 How. 518, 14 L. Ed. 249 (1852), Pennsylvania

brought an action to abate as a common nuisance the erection of a bridge across the Ohio river which would prevent the free passage of river boats. The gravamen of the complaint was that Pennsylvania owned certain valuable public works, canals and railways, constructed at great expense and terminating on the Ohio river, that the bridge would cut off the traffic, and that, as a result, the State's tolls would be diminished and its improvements rendered valueless. The court held that it had jurisdiction under Article III, Section 2, saying (pp. 559-560):

> "In this case the State of Pennsylvania is not a party in virtue of its sovereignty. It does not come here to protect the rights of its citizens. . . . Nor can the State prosecute this suit on the ground of any remote or contingent interest in itself. It assumes and claims, not an abstract right, but a direct interest in the controversy, and that the power of this court can redress its wrongs and save it from irreparable injury. If such a case be made out, the jurisdiction may be sustained.
>
> "When a state enters into a copartnership, or becomes a stockholder in a bank, or other corporation, its sovereignty is not involved in the business, but it stands and is treated as other stockholders or partners. And so in the present case, the rights asserted and relief prayed are considered as in no respect different from those of an individual. From the dignity of the State, the Constitution gives to it the right to bring an original suit in this court. And, this is the only privilege, if the right be established, which the State of Pennsylvania can claim in the present case."

The Court also held that the institution of the suit by the Attorney General was sufficient evidence that the suit was authorized, saying (p. 560):

> "It is objected, in the first place, that there is no evidence that the State of Pennsylvania has consented to the prosecution of this suit in its own name.

> "This would seem to be answered by the fact that the proceedings were instituted by the Attorney General of the State. He is its legal representative, and the court cannot presume, without proof, against his authority."

In *Georgia* v. *Pennsylvania Railroad Company et al.*, 324 U. S. 439 (1945), Georgia sought leave to file a bill against 20 railroads in two capacities, to wit, (1) as quasi-sovereign or as protector of her people against a continuing wrong done them and (2) in her capacity as proprietor to redress wrongs done to her as owner of a railroad and as owner and operator of various institutions of the State. The basic charge of the complaint was that the defendants were restraining trade and commerce. The defendants assertion that the bill did not charge a justiciable controversy within the original jurisdiction of the Supreme Court was rejected, the Court saying (pp. 445-446):

> ". . . we are of the opinion that Georgia as parens patriae and as proprietor of various institutions asserts a claim within judicial cognizance. . . . The complaint alleges a conspiracy to restrain trade and commerce through the fixing of rates. The history of restraints of trade makes it plain that these problems present judicial questions with which courts have long dealt."

During the course of his opinion, Douglas, J., who wrote for the majority of the Court, reviewed the decisions in which it had been held that the Court had no jurisdiction, even though the dispute was between sister states, and the decisions in which a State had been allowed to prosecute a suit in its capacity as quasi-sovereign or as parens patriae. In his opinion he made the following statements which are of interest in the present case:

> "As we have seen Georgia sues as a proprietor to redress wrongs suffered by it as the owner of a rail-

road and as the owner and operator of various public institutions. Georgia, suing for her own injuries, is a 'person' within the meaning of Section 16 of the Clayton Act, 15 USCA Section 26, 4 FCA title 15, Section 26; she is authorized to maintain suits to restrain violations of the anti-trust laws or to recover damages by reason thereof." (p. 477)

* * * * * * *

"It seems to us clear that under the authority of these cases Georgia may maintain this suit as parens patriae acting on behalf of her citizens though here, as in Georgia v. Tennessee Cooper Co. supra (206 U. S. p. 237, 51 L. ed. 1044, 27 Ct. 618, 11 Ann Cas 488), we treat the injury to the State as proprietor merely as a 'makeweight.'" (p. 450)

The court finally concluded (p. 452):

"Since the claim which Georgia asserts as parens patriae as well as proprietor meets the standards of justifiability and since Georgia is a 'person' entitled to enforce the civil sanctions of the anti-trust laws, the reasons which have been advanced for denying Georgia the opportunity to present her cause of action to this Court fail."

Since any attempt by the State of Texas to prevent performance of the contract by the Foundation to the University of Arkansas would constitute an interference with a contractual right, it would seem clear that the Supreme Court would have original and exclusive jurisdiction of the case under the foregoing decisions.

The Supreme Court has also held that it has original jurisdiction in cases in which the plaintiff stands in the position of parens patriae or institutes its suit in a quasi-sovereign capacity.

Kansas v. *Colorado*, 185 U. S. 125 (1902);

Missouri v. *Illinois*, 180 U. S. 208 (1901);

Georgia v. *Pennsylvania Railroad Co., et al.*, 324 U. S. 439 (1945);

North Dakota v. *Minnesota*, 263 U. S. 365 (1923).

In such cases, there is no direct injury to the property of the state or to it in its proprietary capacity but the act complained of affects the health or welfare of such a large number of the state's citizens that the state, in its capacity of protector of its citizens, may bring the suit. Thus in *Missouri* v. *Illinois, Supra* the Supreme Court held that Missouri could institute a suit in the Supreme Court to restrain Illinois and the Sanitary District of Chicago from discharging sewage in the Mississippi river. It would seem that in the present case the health and well-being of the citizens of Arkansas are equally directly affected, particularly since the money is tied to both hospital and educational facilities of the state.

Counsel for complainant are convinced that the Supreme Court has original and exclusive jurisdiction over this action instituted by the State of Arkansas against the State of Texas to restrain interference with its contractual rights and to enjoin the prosecution of any suit in the Texas courts seeking to interfere with such rights. (See 28 *American Jurisprudence, Equity*, Sections 98, 99 and 100 with respect to the power of a court of equity to enjoin interference by a third party with a contract.)

Assuming that the suit involves a justiciable case or controversy within the original jurisdiction of the Supreme Court, several subsidiary questions would be raised by such a suit.

1. *Authority of Arkansas to sue:* In some cases the authority of the plaintiff to institute a suit has been raised. Usually statutory authority exists, although in *Pennsyl-*

vania v. *The Wheeling and Belmont Bridge Company et al.*, 13 How. 518, 14 L. ed. 249 (1852) the court declared that where the suit had been instituted by the Attorney General, the court could not presume against his authority without proof.

2. *Defendants:* This action names the State of Texas and John Ben Shepperd, as Attorney General, as parties defendant. The naming of John Ben Sheppard raises no question as it is settled that a suit against an agent of the state is a suit against the state. *Kentucky* v. *Dennison*, 24 How. 66, 16 L. ed. 717 (1861); *Sundry Slaves* v. *Madrazo*, 1 Pet. 110, 7 L. ed 73 (1828); *Minnesota* v. *Hitchcock*, 185 U. S. 373 (1902).

It may also be desirable to join the Foundation, a Texas corporation, as a party defendant. Such a joinder would not oust the court of jurisdiction. *Texas* v. *Florida et al.*, 306 U. S. 398 (1939). No cases have been found which indicate the result which would be reached if the Foundation took the position that the contract was valid and was, therefore, realigned as a party plaintiff. It seems very unlikely, however, that Texas could urge a realignment of parties and then claim that such a realignment defeated the Court's jurisdiction, particularly if the Foundation's pleadings were carefully drawn with this point in mind.

3. *Will the Court enjoin a State official from performing duties imposed on him by state law?* It might be suggested that an injunction restraining John Ben Shepperd from prosecuting his suit against the Complainant and the Foundation in the State courts would prevent him from performing duties imposed on him by State law, and that, therefore, the injunction should not be issued. Such an argument would appear to be unsound for two reasons: (1) The fact that Mr. Shepperd could not proceed in the State courts would not prevent him from performing his duties since the United

States Supreme Court would be the proper Forum. (2) Even if he were restrained from performing his duties it would be immaterial. In *Pennsylvania* v. *West Virginia, Supra,* the bill specifically requested that the defendant be restrained from enforcing one of its legislative acts and there is no suggestion that the court is without power to take such action.

4. *Would the institution of a suit by Texas against the Foundation be fatal to a subsequent suit by Arkansas in the Supreme Court?* In *Kentucky* v. *Indiana, Supra* the plaintiff requested, as part of its relief, that an injunction be issued restraining the individual defendants from prosecuting a suit which they had instituted in the State court to have the bridge contract declared illegal. Although the suit was dismissed against the individual defendants on the ground that their only standing was as citizens of Indiana and only the State could defend the rights of the citizens, there is no suggestion that the Court could not have issued an injunction prohibiting the prosecution of an action in the state courts. On the contrary, the fact that *exclusive* jurisdiction over suits between States is vested in the Supreme Court under *28 USCA Section 1251* would make mandatory an injunction prohibiting the prosecution of such a suit in any other forum.

5. *Would the fact that the Supreme Court would be compelled to pass on questions of Texas law be fatal to the assumption of jurisdiction?* The Court squarely considered this point in *Kentucky* v. *Indiana et al.,* 281 U. S. 163 (1930) and answered the question in the negative.

Conclusion

Counsel for Complainant are convinced that this action by The State of Arkansas against The State of Texas and her Attorney General seeking to restrain the interference with its rights under its contract with the Foundation pre-

sents a "case" or "controversy" within the original jurisdiction of the Supreme Court.

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